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Chairman Salmon, Ranking Member Sherman, members of the committee, thank you for inviting me to testify this morning. As Hong Kong's Legislative Council prepares to debate and vote next week on the Chinese government's proposed electoral reform "package," this discussion is extremely timely.

Current and Recent History of Democracy in Hong Kong

Basic Legal Framework

The 1984 Sino-British Joint Declaration spelled out the terms for transfer of Hong Kong from British to Chinese control. That document stipulates that Hong Kong shall have "a high degree of autonomy" in matters other than national defense and foreign policy, while the Basic Law, Hong Kong's functional constitution, states that universal suffrage is the "ultimate aim" for the selection of the chief executive, the top leader, as well as members of the Legislative Council. The Basic Law also provides that the International Covenant on Civil and Political Rights (ICCPR) applies to Hong Kong, and the Covenant's guarantee of universal and equal suffrage means that people not only have the right to vote in

elections, but also that they should have the right to stand for elections regardless of their political views.

Hong Kong's Basic Law states that after 2007, Hong Kong can move towards the goal of universal suffrage by amending the electoral methods in three steps. First, two-thirds of all Legislative Council members have to endorse the amendments. Second, the current chief executive has to agree to it. Last, the amendments have to be reported to China's Standing Committee for the National Peoples' Congress (NPCSC) for approval.

Beijing Backtracks

The central government, in a series of decisions made since 1997, has backtracked and foreclosed on this obligation to institute universal and equal suffrage. The commitment to allowing electoral reform to be decided by Hong Kong people was first broken on April 6, 2004, when the NPCSC made an "interpretation" of the Basic Law adding a requirement that the chief executive submit a report to Beijing justifying the need for any further democratization. The decision means that electoral reforms can only be initiated by Beijing's hand-picked chief executive, and that the NPCSC must then approve any reform proposals initiated by the chief executive before the Legislative Council can weigh in. This thus bars Hong Kong's semi-democratic legislature from taking any action without Beijing's approval. In 2004, the NPCSC ruled out universal suffrage for the 2007 selection of the chief executive and the selection of the 2008 Legislative Council. In 2007, it ruled again that there would not be universal suffrage for the next elections of the chief executive and the Legislative Council in 2012. But the 2007 decision also said that universal suffrage was "maybe" in store for the next chief executive election and Legislative Council elections in 2017 and 2020, respectively.

Ahead of the promised reforms for 2017, Hong Kong's Chief Executive Leung Chun-ying established a task force on the issue on October 17, 2013. The task force started the first round of public consultation on December 4, 2013, which lasted for five months. Leung's report on the consultation to the NPCSC, which he submitted on July 15, 2014, said it is "mainstream opinion" in Hong Kong that chief executives must "love China and love Hong Kong"; that the power to nominate chief executive candidates should be vested in a

committee like the current structure controlled by Beijing, and that the legislature should not be democratized before the next elections.

Although the public consultation was ostensibly open to public input, the results as presented to the central Chinese government as “mainstream opinion” were clearly manipulated and failed to reflect different views articulated by large segments of the population, who have consistently expressed strong desires for genuine democracy both in public opinion polls and in demonstrations.

Following the report’s submission, on August 31, 2014, the NPCSC made a decision on the 2017 chief executive elections that catalyzed the Occupy demonstrations. While all eligible voters in Hong Kong will now be allowed to cast ballots for the territory’s chief executive, Beijing’s proposal imposes a stringent screening mechanism that effectively bars candidates from nomination for chief executive that the central government in Beijing dislikes.

Limitations on who may run for office that are based on political opinion, expressions, membership, or association are incompatible with the ICCPR. That the Chinese government has labelled pro-democracy legislators and political figures who criticize the Chinese Communist Party’s policies on Hong Kong and human rights as “anti-China,” suggests an intent to discriminate against potential candidates for chief executive on the basis of their political opinions. Political screening of candidates for office in Hong Kong is also incompatible with the Sino-British Joint Declaration’s commitment to Hong Kong’s “high degree of autonomy.” Any chief executive will be bound under the terms of the Joint Declaration and the Basic Law, and the Hong Kong government has been promised it can otherwise enjoy great autonomy and reflect the preferences of Hong Kong people on most policy matters. Many successful governments around the world have local officials and administrations with views divergent from those at the national level.

Demonstrations

On September 22, 2014 Hong Kong students’ weeklong boycott of classes against the “reform package” ended with the students entering Civic Square, in front of the government headquarters, without permission. Police clearance of the peaceful students

using pepper spray and force sparked bigger protests; police handling of these protests—blocking off the protest area and declaring the protest illegal—in turn prompted more demonstrators to join, leading them to spill onto roads nearby.

The “occupation” of parts of Hong Kong lasted until mid-December, when it was eventually cleared by the police. During the occupation, Hong Kong police at times used excessive force. Demonstrators also alleged that the police in some circumstances failed to promptly protect them when attacked by counter-demonstrators, and in at least one instance seven Hong Kong police were caught on film beating and kicking Ken Tsang, a demonstrator. While those officers have been arrested, they have not yet been prosecuted. The Complaints Against Police Office received complaints from approximately 1,900 individuals regarding Occupy, yet only about 150 were actually taken up for closer scrutiny.

Hong Kong authorities only agreed to one meeting with student leaders, and that discussion, at which the Hong Kong government was represented by Chief Secretary Carrie Lam, was inconclusive.

Other Human Rights Concerns in Hong Kong

Although the media has greater freedom in Hong Kong than elsewhere in China, journalists and media owners, particularly those critical of Beijing, came under increasing pressure in 2014. In February, a prominent editor, Kevin Lau, was stabbed by unidentified thugs; in July, HouseNews, a popular independent news website known for supporting democracy in Hong Kong, was shuttered by its founder, who cited fear of political retaliation from China; throughout 2014, Jimmy Lai and his media businesses, known for critical reporting on China, were repeatedly threatened.

Decisions by immigration authorities to deny entry to several visitors critical of China's human rights record raised concerns that the territory's autonomy was being eroded. Hong Kong-based activists have expressed concern that peaceful demonstrations are increasingly subject to aggressive police surveillance.

What's Next?

LegCo will debate and vote on the government's "reform" package starting on June 17, and Hong Kong's Chief Secretary has said she expects the process will be finished by June 20. If the package is voted down, Hong Kong will simply continue to hold elections as it has in the recent past, and franchise will not be extended. Beijing has said repeatedly in recent months that it will not alter the proposal, and it remains unclear if the electoral framework can be amended in the future if it is adopted unchanged now. Hong Kong police have announced that they are prepared for demonstrations in response to the vote.

Human Rights Watch believes that the Chinese government should realize that Hong Kong's political system is unsustainable and must be fixed to make it more responsive to the people of Hong Kong. Each of the chief executives handpicked by Beijing has proven deeply unpopular with significant numbers of people in Hong Kong, and the prolonged uncertainty over the 2017 and 2020 election process is likely to trigger ongoing protests. The Chinese government should also realize that its repeated manipulations of the Basic Law causes resentment and mistrust of Beijing among many people in Hong Kong.

The Hong Kong government should commit to an investigation into all credible allegations of the use of excessive force to clear protestors during the Occupy protests, and exercise restraint with respect to further uses of force, particularly in light of anticipated protests or rallies next week following the LegCo vote on the reform package. It should announce steps to make the nomination committee for the chief executive, which remains dominated by Beijing loyalists "broadly representative," as articulated in the Basic Law. It should also take steps to democratize the Legislative Council such that all members are elected on an equal basis. Authorities in Beijing and Hong Kong must revisit undemocratic electoral arrangements, which give some voters multiple votes and others only one, and ensure that, as required by article 45 of the Basic Law, appropriate ones are fashioned "in light of the actual situation in the Hong Kong SAR," where the majority favors genuine democracy.

The United States and Democracy in Hong Kong

Over the past year, the US has spoken in support of genuine universal suffrage and the legitimacy an elected leader would bring in Hong Kong. It has done so at senior and

working-levels, and has expressed concern that, “China’s commitment to the “One Country, Two Systems” model, as well as to maintaining a high degree of autonomy, are eroding.” It has stipulated that the US believes not just in the right to vote but the right to run: meaningful elections are ones “that provides the people of Hong Kong a meaningful choice of candidates representative of the voters’ will. This means allowing for a competitive election in which a range of candidates with differing policy approaches are given an opportunity to seek the support of eligible Hong Kong voters.”

American officials meet regularly with pro-democracy leaders in Hong Kong. The US has complied with reporting requirements regarding Hong Kong, and provided support to democracy-promotion activities. And importantly, the US has linked the lack of democracy in Hong Kong to a lack of democracy in the mainland.

At the same time—and compared to vigorous, unapologetic support to democracy in other parts of the world—the US clearly does not want to fuel perceptions, however misplaced, that it is supporting one set of actors. There are inconsistencies within the US government, and indeed within the State Department, about whose responsibility it is to push Beijing to fulfill its obligations to respect political rights in Hong Kong, and indeed whether and how hard to push Beijing to fulfill its obligations to respect political rights in the mainland. It remains of grave concern to Human Rights Watch that American officials rarely speak about the lack of competitive elections in China, or even imagine standing in solidarity with pro-democracy voices from the mainland.

The United States’ rhetoric is also problematic when it urges “all sides” in Hong Kong to exercise restraint and pursue compromise. In the abstract, these points are valid. But in reality the vast majority of the people in Hong Kong who want genuine democracy have methodically and exhaustively pursued all avenues available to them—only to be ignored. The vast majority of those who demonstrated did so with extraordinary restraint—only to be ignored. The US should acknowledge these realities, rather than resort to abstract niceties.

What should the US do differently or better?

- On all appropriate occasions, including the outcome of the vote on the reform “package,” the US should comment from Washington, Beijing, and Hong Kong to underscore the role of relevant players in the US, Chinese, and Hong Kong governments.
- The lack of respect for political rights in Hong Kong and in the mainland should be an issue of priority in the June US-China Strategic and Economic Dialogue and in the September visit by President Xi Jinping to Washington.
- It should encourage other like-minded governments, including the European Union and United Kingdom, to speak with one principled voice.
- It should publicly urge Hong Kong authorities to amend the Public Order Ordinance, which because it requires all demonstrations to receive prior approval, is not in conformity with international human rights standards on the freedom of assembly, and to promptly pursue all allegations of excessive use of force by the police.